SUPREME COURT OF THE UNITED STATES.

No. 366.

THE STEAMSHIP SIR WILLIAM PEEL AND CARGO, A. AND S. HENRY & CO. ET AL., CLAIMANTS, APPELLANTS.

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

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1 *Judgment decreeing claimants to pay costs and refusal of damages. From minutes of June 3d, 1865.*

UNITED STATES
vs.
ST'R SIR WM. PEEL and CARGO. } No. 7709.

On the preliminary trial of this cause, considering that the position of the Sir William Peel when captured was a matter of doubt, and with the view to set this question at rest, the court allowed the captors further proof, and extended to the claimants the same privilege, if they chose to accept it.

The result of the whole testimony satisfied the mind of the court that the Sir Wm. Peel was captured when anchored south of the line dividing the waters of the Rio Grande, and when, therefore, she was in neutral waters. On that ground the court decreed her restitution; but entertaining grave doubts as to the object of her voyage, so grave, indeed, that but for this consideration that she was captured in neutral waters, the court should have decreed her condemnation—

It is now ordered and decreed that the costs and charges consequent upon the capture, be paid by the claimants, and that damages be refused.

2 *Petition of appeal.—Filed June 29th, 1865.*

United States district court, eastern district of La., in prize.

UNITED STATES
vs.
ST'R SIR WILLIAM PEEL, HER TACKLE, &c., and cargo. } No. 7709.

To the honorable Edward H. Durell, judge of the district court of the United States for the eastern district of Louisiana:

The petition of Jesse Thornham, A. and S. Henry & Co., and Laycock & Corry, claimants herein, respectfully represents that they are aggrieved by the final decree rendered herein on the 3d day of June, present, and are advised that there is error therein to their prejudice; that the amount in issue exceeds the sum of two thousand dollars—

Wherefore they pray that an appeal be allowed them therefrom to the next term of the Supreme Court of the United States, upon their giving bond and security, conditioned according to law, in such sum as the court may direct.

EDW. BRIGGS, *Proctor.*

3 *Motion and order of appeal.—From minutes of June 29th, 1865.*

UNITED STATES
vs.
ST'R SIR WM. PEEL and CARGO. } No. 7709.

On motion of Edw. Briggs, proctor for Laycock & Corry, claimants of the vessel, and for A. and S. Henry & Co., claimants of the cargo,

and on his presenting a petition praying an appeal from the decree herein rendered, on the 3d of June, inst., to the next term of the Supreme Court of the United States, it is ordered that the same be allowed as prayed for, returnable to said Supreme Court the first Monday of December next, upon giving bond in the sum of $250, with good and solvent security, conditioned as the law directs.

4 *Appeal bond.—Filed June 29th*, 1865.

District court of the United States, in admiralty.

UNITED STATES
vs.
ST'R SIR WILLIAM PEEL, HER TACKLE, &c., and cargo. } No. 7709.—Appeal bond.

UNITED STATES OF AMERICA, *Eastern district of Louisiana:*

Know all men by these presents that we, Edw. Briggs, att'y for Jesse Thornham, A. and S. Henry & Co., and Layeock & Corry, claimants, as principal, and Edm. J. Forstall, as surety, are held and firmly bound unto the Uunited States of America in the sum of two hundred and fifty dollars, ($250 00,) to be paid to the said United States or assigns, for the payment of which, well and truly to be made in lawful money of the United States, we bind ourselves and each of us, our and each of our heirs, executors, administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated at New Orleans the 29th day of June, 1865.

5 Whereas the above named claimants have appealed to the next term of the Supreme Court of the United States from a final judgment of the district court of the United States for said district, rendered against them on the 3d day of June, 1865, in the above-entitled cause:

Now, therefore, the condition of this obligation is such, that if the above named appellant shall prosecute his appeal to effect, and answer all damages and costs, and satisfy whatever judgment may be rendered against him, if he fails to make his appeal good, then this obligation to be void; otherwise the same shall be and remain in full force and effect.

EDWARD BRIGGS. [L. S.]
EDM. J. FORSTALL. [L. S.]

Signed, sealed, and delivered in presence of—
W. S. BENEDICT, *D'y Clerk.*

The solvency and sufficiency of the surety on this bond is approved and accepted.
June 29th, 1865.

E. H. DURELL, *Judge.*

6 *Ex U. S. marshal's bill.—Filed August 3d, 1865.*

United States district court, eastern district of Louisiana.

UNITED STATES MARSHAL'S OFFICE.
New Orleans, September 1st, 1865.

UNITED STATES
vs.
ST'R SIR WM. PEEL, &c., and CARGO. } No. 7709.

			Fees.	Disb'mts.
1863.				
Sept.	26.	Order of dist. att'y to seize	$2 00	
	28.	Order to discharge cargo, &c	2 00	
		Warrant and libel	4 00	
		Advances to J. A. Noble to pay laborers		$84 50
	29.	Paid prize crew, 14 in num., for pumping, $2 ea		28 00
Oct.	1.	Paid coal-heavers		11 00
		Monition in N. O. Times		12 00
	3.	Quarantine fees		20 00
	5.	Order to sell damaged cotton	2 00	
		Bill of harbor-masters		45 00
	6.	Adver'g sale in Times and Era, $6 each,		12 00
	8.	James Murphy, drayage		133 50
		O. A. Pierce, discharging clerk		26 00
		C. Wheeler, stevedore		306 25
	9.	Services of deputy, 15 days, at $5 per day	75 00	
	19.	Order to pay witnesses	2 00	
		Jas. Webster, witness		172 50
7		R. H. Clark, witness		120 00
		T. C. Haggart, witness		103 50
		Repairs, H. Daly		964 75
		Calking, M. Welsh		12 75
		A. Pierson, hire of flat		5 00
Nov'r	26.	Order to take test'y before U. S. prize com'r	2 00	
	27.	Subpœna before U. S. prize com'r, and expenses	50	1 00
	28.	One subpœna to Capt. Woolsey	50	
		Commission on sale damaged cotton	97 50	
		Lumber, J. B. Prague		52 00
		Storage on 40 bales cotton		10 00
Dec.	11.	Expense of pumping		4 00
1864.				
Jan'y	4.	Order to release charts, &c	2 00	
	5.	2 notices of trial	4 00	
		3 summons	6 00	

Jan'y	5.	P. Mandell, repairs to cotton bales Planters' press, storage 863 bales, 3 mo's,		$42 20 518 40
	7.	Attendance prize com'rs' court	$4 00	
	13.	Expense pumping		4 00
	16.	Order to pay witness Jas. Garity	2 00	
		Paid witness Jas. Garity		142 00
		2 notices of trial to attorneys	4 00	
		1 notice of test'y to attorneys	1 00	
M'ch	3.	3 notices and one summons	3 50	
	7.	2 notices of trial	4 00	
Ap'l	5.	Expense pumping		6 00
		Expense cleaning engines		8 00
	May 23.	Agreement for taking further testimony	4 00	
8	July 9.	Citation appeal to Supreme Court,	2 00	
July	22.	Expense pumping		6 00
		Rating chronometer		2 50
Aug.	8.	6 days' att'd'ce d'y on board steamer	30 00	
	26.	6 notices to appraisers	3 00	
Sept.	1.	Storage on cargo in Planters' press, 864 bales cotton, from Dec. 29, '63, to Sept. 29, '64		1,555 20
		Marshal's charge of custody from 26 Sept., '63, to date		913 00
		Commissions on disbursements	72 45	
		Storage on part of cargo in warehouse		25 00
			329 45	5,346 55

James Graham, late U. S. marshal, being duly sworn, doth depose and say that the within bill is correct and true, and that the charges were actually incurred for the purposes therein set forth.

JAS. GRAHAM.

Sworn to and subscribed before me this 27th day of July, A. D. 1865.

K. LOEW, *D'y Cle k.*

Approved. E. H. DURELL, *Judge.*

9 *Taxation of costs.—From minutes of August 3d,* 1865.

UNITED STATES
vs.
ST'R SIR WM. PEEL and CARGO. } No. 7709.

Ordered that the costs, charges, and disbursements in this case be taxed, allowed, and paid as follows, viz.:

District attorney, ½ per cent.	$4,288 20
Clerk	555 75

Clerk, add'l	$25 00
James Graham, ex marshal	5,676 00
C. Bullitt, marshal	251 80
Prize commissioners	600 00
Appraisers on cargo	3,061 98
(Out of which H. G. Heartt is allowed for his disbursements the sum of $304 65, being at the rate of 10 c. per bale, for labor, and 25 c. for w'g 859 bales, the balance to be divided bet. the 3 appr's.)	
Appraisers' fees on vessel	1,200 00
" " on dam'g'd cotton sold in 1863	131 60
Keeler & Heartt for special survey	117 50
Bill Planters' press	10 00
Registrar, per cent. on $7,300	73 00
	15,990 83

10 District court of the United States, east. district of Louisiana.

I certify that the foregoing nine pages, together with the transcript of appeal in this case already on file in the Supreme Court of the United States, do contain and form a correct and complete transcript of the original record of the case of the United States vs. the steamship Sir William Peel and cargo, No. 7709 of the docket.

In testimony whereof, I hereto set my hand and the seal of our court, at New Orleans, this 10th day of August, A. D. 1865, and the 90th year of the American independence.

[SEAL.] K. LOEW, *D'y Cl'k.*

11 It is agreed that the record shall go up in this form, and that the transcript heretofore forwarded shall be considered as a part of it, the object of this agreement being merely to save the labor and cost of recopying it.

RUFUS WAPLES, *U. S. Att'y.*
EDWARD BRIGGS, *for Claimants.*

Filed January 16, 1866.

Burden a claimant the no arbitrary w

In the Supreme Court of the United States.

UNITED STATES, libellants and appellants,		
vs.		In Prize.
THE STEAMSHIP SIR WM. PEEL, and cargo.		

Appeal from the district court of the United States for the eastern district of Louisiana.

BRIEF FOR THE UNITED STATES AND CAPTORS.

The steamship Sir Wm. Peel of 1,535 tons burden, 247 feet long, and 300-horse power, with clearance from Liverpool to Matamoras, came to anchor in the open roadstead near the mouth of the Rio Grande, on the 24th of June, 1863, and remained in those waters until the 11th of September following, when she was captured there by the U. S. steamship "Seminole," one of the vessels then maintaining at that roadstead and in the neighboring waters an effective and duly proclaimed blockade of all the ports of Texas. The Peel was sent to New Orleans, and there, the vessel and cargo having been duly libelled as prize, the vessel was claimed by the master, in behalf of Messrs. Corry & Laycock, of Manchester, England, alleged to be the sole owners, and the cargo was claimed by the master, in behalf of Messrs. A. & S. Henry, also of Manchester, alleged to be its sole owners. After the usual examinations *in preparatorio*, further proof was introduced on both sides, and a decree was entered dismissing the libel, restoring vessel and cargo to the claimants, and certifying reasonable cause of seizure. No grounds of condemnation are stated in the decree

(Rec., 78;) but in the supplemental decree as to costs and expenses, the court states in substance, that the decree of restoration passed upon the ground that the capture was probably made in neutral (Mexican) waters, and but for this fact decree of condemnation would have been entered.

It is fully proved that the Sir Wm. Peel soon after her arrival at the mouth of the Rio Grande, came to be generally regarded by persons in that vicinity familiar with her movements, as being engaged in clandestine and contraband proceedings, involving dealings with the rebel authorities in Texas, and the supply of articles for the use of the rebel forces, and the opinion came to be generally entertained and freely expressed, that the vessel, after obtaining and disposing of her return cargo of cotton, would probably be converted into a rebel privateer, for which service her size and construction made her very fit. On her arrival she anchored in the American interdicted waters off the coast of Texas, then under blockade, and in that position the work of unlading her outward cargo, and shipping her homeward cargo of cotton, was at the same time carried on.

The outward cargo seems to have been discharged by lighters at the little town of Bagdad, in Mexico, and thence carried in a light-draught steam-tug thirty-six miles up the river to Matamoras. The return cargo of cotton seems also to have been brought down from Matamoras in lighters and so put on board the vessel. The outward cargo shipped by Messrs. Henry, at Liverpool and London, was *consigned* to Messrs. Milmo & Co., at Matamoras, remaining always the property of the shippers and to be disposed of by the consignees according to instructions and for shippers' account. There is no proof nor averment that the outward cargo, upon being landed either at Bagdad or at Matamoras, paid any duties whatever at either of those places, though a note of its being landed appears to have been certified by the custom-house office at Matamoras. There is no proof nor averment that the outward cargo, or any part of it, entered into the general consumption at that place or was intended to be so disposed of. On the

contrary, it is manifest upon all the proofs that the outward cargo had destination and found its way into Texas through Brownsville, and that its proceeds were there invested in the purchase at that place, and mostly if not entirely from the rebel authorities, on behalf and in the name of Messrs. Henry & Co., through their agents, Milmo & Co., of a return cargo of cotton, which was to have consisted of about three thousand bales, and of which, unfortunately, only 950 had been actually laden at the time of the capture. Milmo & Co., of Matamoras, consignees and agents in this transaction, had a branch house at Brownsville. Their business was to run foreign goods across the river into Texas, principally for the use of the rebel authorities, and to bring back through Brownsville for exportation from Matamoras, return cargoes of cotton. Being established in this business, Messrs. Milmo & Co. soon threw off all concealment, and, before this capture, had advertised and placarded themselves as the commercial agents of the rebel government in Texas.

At the time of the capture there were no papers whatever on board the Sir Wm. Peel, all the papers having been, as the master testifies, placed in the hands of the British consul and the consignees at Matamoras. Time being given, when the ship was captured, to send for these papers, the master declined to do so; but under the order for further proof, the Liverpool and London manifests were produced by the consignees, and the certificate of register, the charter-party, and the shipping agreement and crew list were produced by the master. None of the instructions from the owners to the consignees were brought up; and all we know from the claimants in relation to such instructions is contained in the testimony of Gilgan, one of the firm of Milmo & Co., (Rec., 560,) who states that the cargo captured on board the Sir Wm. Peel was the *bona fide* property of Henry & Co.; that the outward cargo landed at Matamoros belonged to the same parties, and that the consignees had full instructions to invest its entire proceeds in cotton and to fill up the Sir Wm. Peel with it and despatch her back to Liverpool as soon as possible. The details of this

operation, as indicated in the instructions, the claimants deemed it wise to conceal.

The Sir Wm. Peel was purchased on the 18th of April, 1863, by three parties at London, and by them sold on the 24th of the same month to Corry & Laycock, of Manchester, who, three days afterwards, on the 27th, chartered the vessel "to trade between Liverpool and Mexico, and any other lawful ports or places as ordered by the charterers, and back to Liverpool. It being understood that the vessel is not to attempt to break any blockade. No injurious cargoes to be shipped as ordered by the charterers; the cargo to be laden in any dock or discharged in any dock the charterer may order, provided the vessel is always safe."

The vessel sailed from London on the 4th of May, and thus within seven days she had been purchased, chartered, laden in port and started on her voyage from London *via* Liverpoo with ostensible destination to Matamoras. Prior to this voyage the Sir Wm. Peel, having been built for the Portuguese government, had been employed in the transport service, and at the time of her capture was found to have on board a supply of small arms and boarding cutlasses for a crew of forty men. Her marine engines were six feet below the water line. She had a fire-proof powder magazine with two 18-pound cannonades mounted in port-holes. Though cleared from Liverpool to Matamoros direct, the vessel on the way out touched at Jamaica. This fact was suppressed by the master in his testimony *in preparatorio*, and brought out in that of the mate, who states that the stop at Jamaica was for the purpose of coaling. This incident of the voyage has special importance by reason of the fact subsequently developed that a portion of the outward cargo which was discharged by lighters at the mouth of the Rio Grande is not to be found manifested either in the Liverpool or London manifests, nor in any other invoice or statement of the cargo.

Upon the whole, the transaction in which the Peel and her cargo were engaged, and in the course of which they were captured, appears upon the proofs to have been an exchange of a

cargo of goods well fitted for the use of the rebel forces, and in part unquestionably contraband, for cotton bought, or by some arrangement procured, in Texas from the Rebel authorities who held it, both the outward and the return cargo passing through the blockaded port of Brownsville *via* Matamoras without change of ownership *in transitu*, and the discharge of the outward cargo and the lading of the inward cargo taking place in the waters of a blockaded coast.

FIRST POINT.

The capture of the Sir William Peel was made in American, and not in Mexican waters; but if this were otherwise, still no violation of neutral territory is averred or suggested in this case by the government of Mexico or in its behalf; and such alleged violation cannot be effectually shown or set up in a prize court by any other claimant; and therefore the locality of this capture, as alleged by the present claimants in support of their claims to vessel or cargo, is wholly immaterial.

(*a*) The position of the Sir William Peel at the time of her capture on the American side of the dividing line between the United States and Mexico is established by the best and most conclusive testimony that could be submitted. Two officers of the navy, Crosby and Arthur, in the regular discharge of their duty, ascertained, by careful observation with compass and chart before them, the exact position of the captured vessel. They both testify, and Crosby shows, by the latest and most accurate chart of those waters, the exact locality of the prize, and the fact that she lay on the American side of the line. These two officers are corroborated by other unimpeached witnesses; among them, Haggart, Webster, the clerk of the United States consul at Matamoras, and Clark, the mate of the barque Mary Bently; but such corroboration, however respectable, is not, as we conceive, necessary or important. The observations of the two officers, made in the line of their duty and with the sole and special purpose of ascertaining the fact authentically, must, unless most effectually contradicted, be

taken as conclusive as to the position of the prize vessel, and there is no contradictory evidence presented having any real weight against their testimony. Commander Woolsey testifies only as to the position of the Peel before he left the station, which was more than twelve days before the capture, and it is certain that after he left she changed her position. The testimony of Hargett, the master of the British steamer Labuan, is not of much weight. It is incorrectly taken down by the clerk, and the witness did not see fit to correct the error. He testifies that he made his observation and determined the position of the Sir William Peel on the 11th of August, 1863, without any special thought or purpose in the matter, and that he made no memorandum and testifies merely from memory, and yet his testimony is not given until January, 1864, when more than five months had elapsed since he made the observation. Mistake in his recollection under such circumstances is highly probable; and as contradictory evidence, his testimony can have little weight, even if we assume that he intended to tell the truth. The contradictory testimony of the four lightermen, Dalzell, Langdon, Cooper, and Baker, is of still less weight. Their depositions, taken without cross-interrogatories, show them to be careless and not well-informed witnesses, and really to have known nothing whatever with any degree of accuracy as to the position of the Peel at the time of her capture.

(*b*) All the authorities agree that capture within neutral territory can only be averred in support of a claim for restoration by the accredited agent of the government whose neutral immunity has been thus infringed. Neither the enemy claimant, who has no standing in the prize courts, nor the citizen claimant, who has made his property liable to condemnation in prize for unlawful trading with the enemy, nor the neutral claimant, who, at the time of capture, is found in the predicament of having laid aside his neutral character, and having by unneutral conduct made himself *pro hac vice* an enemy, can set up for defence against decree of condemnation so incurred, the fact of capture within neutral limits. No case has been or can

be produced giving warrant for such allegation. All the adjudged cases state, with equal explicitness and emphasis, first, that the claim of neutral immunity, when properly pleaded by the aggrieved neutral government, is conclusive and effectual in all cases as a defence against decree of condemnation, and, secondly, that such claim on such ground can be made only by and in behalf of such government whose territorial rights have been infringed.

In the case of the Anne (3 Wheat., 435) this court unanimously laid down and applied these principles in their whole extent; and the authority of that decision remains not only undisturbed but familiar.

The leading British case upon the subject is the *Purissima Concepcion.* (6 Rob., 445.) In that case, Lord Stowell stated, in the plainest words he could use, that "it is a known principle of this court that the privilege of territory will not itself inure to the protection of property, unless the State from which that protection is due steps forward to assert the right. In this instance the government from which the protection was undoubtedly due did not think proper to vindicate those rights, *and it is not competent for the party to whom the property belongs to avail himself of the plea.*

The same doctrine is maintained in the other British cases—the *Etrusco,* (cited 3 Rob., 162;) the *Eliza Ann,* (1 Dod., 244;) the Diligentia, (1 Dod., 412.)

In no one of these cases does the court attempt to make any distinction between the case of a captured non-combatant *enemy* and a captured *neutral* who has forsaken his neutrality, and by his conduct made himself liable to be captured and condemned as an enemy.

(*c*) The order issued by the Navy Department to our naval vessels on the 18th of August, 1862, prohibiting the capture of any vessel within the territorial waters of a friendly nation, has plainly no application to this case, where the captors of the ship proceeded in the capture upon the best observations which could be made, and so determined the position of the prize to be such as to make her capture not only lawful, but

obligatory upon them in the performance of their duty. Indeed, upon its face the order is intended to protect the territorial immunity of neutral nations, and not at all to save blockade runners, and contrabandists in doubtful positions near the neutral line, from the lawful and rightful penalty of their conduct. The order is quoted in Upton, p. 450. See also act of June 30, 1864, chap. 174, sec. 33.

SECOND POINT.

This captured cargo of cotton was mostly, if not wholly, sold and delivered by the rebel authorities to the agents of Henry & Co., the claimants, within the rightful jurisdiction of the United States at Brownsville, in Texas, in the summer of 1863, and such sale and delivery of the cotton to the claimants constitute the sole ground of title to it which they allege; and such sale and delivery of the cotton to the claimants conveyed to them no valid title as against the United States.

(*a*) It is proved by Garrety, the clerk of the agents, Milmo & Co., (Rec., 40 and 42,) that the bulk of the cotton laden on board the Sir Wm. Peel was delivered to him, acting for Milmo & Co., at Brownsville in July, 1863, and it is proved by Gilgan, partner of Milmo & Co., (Rec., 60,) that his house so bought and received the property at Brownsville, and were, at the time of capture, still sending it forward merely as the agents and factors of the claimants, Henry & Co., without themselves acquiring or having any interest whatever in the property so purchased, and so sold and delivered. The whole transaction upon which Henry & Co. found their title was *their act* done by *them* at Brownsville, in a course of dealing there with the rebel authorities.

(*b*) The 5th and 6th sections of the confiscation act of the 17th of July, 1862, Ch., 195, (12 Stat., 591,) and the President's proclamation of the 25th of July, 1862, issued in pursuance thereof, (12 Stat., App., 1266,) were intended to make, and do expressly make, all such sales and transfers of property by persons so engaged in the rebel service null and void to all

intents and purposes, but specially as against the rights and claims to the property set up and prosecuted by the United States.

(*c*) The right of a neutral in time of civil war to trade with the rebel and enemy military authorities within the rightful jurisdiction of the legitimate government is subject to the municipal authority—the *jus majestatis*—of the legitimate government, and to this extent stands upon a wholly different footing from that of similar trading by a neutral within the jurisdiction of a foreign enemy government. The fact that in our case of civil war the rebel authorities never had any other recognition than that of belligerents, having never been recognized either by the United States or by foreign nations as a government *de facto*, presents this distinction in a clear light, and establishes the operation of municipal statutes imposing disability, prohibition or penalty upon persons and property in the insurrectionary States during the war. Such indeed is the theory of all the legislation of Congress upon the subject. Act July 13, 1861, ch. 3. Act August 6, 1861, ch. 60. Act July 17, 1862, ch. 195. Acts of March 12, 1863, and July 2, 1864.

(*d*) The sale and delivery of this cotton having been made at Brownsville, the supreme law at that place is the law governing the contract of sale and its validity.

THIRD POINT.

At the time of this capture, and before and afterwards, the blockade of the port of Brownsville, effectually maintained by naval force of the United States at the mouth of the Rio Grande, was lawful and valid blockade.

(a) The President's proclamation of the 18th February, 1864, (13 Stat., App. 740,) recites and fixes the fact that the port of Brownsville had been up to that date blockaded in pursuance of the proclamation of April 19, 1861. The presence of an adequate blockading force at the entrance of the port of Brownsville at the time of this capture, is fully proved and not disputed. It is submitted that these two facts establish for

this court in a prize proceeding to all legal intents and purposes, the validity of the blockade thus proclaimed, reaffirmed, and maintained by the political department of the government.

(b) By the act of March 3d, 1848, (9 Stat,, 409,) establishing in southwestern Texas, the collection district of Brazos de Santiago, Point Isabel, at the mouth of the Rio Grande, is made the port of entry of the said district; and by the subsequent act of the 16th of June, 1860, (12 Stat., 39,) the port of entry at Point Isabel was abolished, and the custom-house of the district transferred from Point Isabel forty miles up the river to Brownsville, which was then made the port of entry for the said district; and it was further enacted that the collector of the district should keep his office at Brownsville, but that his deputy collector authorized to enter and clear vessels should reside and keep his office at Brazos de Santiago, at the month of the Rio Grande; and the same act further provides for the transhipment under treasury regulations of foreign goods duly bonded at the mouth of the river when brought to that point with destination to Brownsville. Upon this legislation it is submitted that the limits of the port of Brownsville as blockaded by the United States extend to the waters at the mouth of the Rio Grande, where the deputy collector resides and performs his duties. This being so, the maintenance of blockade at the mouth of the river, though co-terminous, is not only a proper, but is in fact the only proper mode of establishing a blockade of the port of Brownsville.

(c) In the case of a bay or gulf being an arm of the sea, and having several ports of entry on its shores, the doctrine of the prize courts of Great Britain seems to be that a blockade duly maintained at the mouth of such inland water is valid and lawful in its operation upon any of the ports within such water when the whole of the shore belongs to the enemy and there is no neutral port within the water so blockaded. In the well-known blockade cases in the Crimean war, this doctrine as to such blockade of ports in such bays and gulfs appears to have prevailed; but such limitation of the rule has never been applied or accepted in the case of a co-terminous

river dividing enemy from neutral territory, navigable from the sea, having upon its banks both enemy and neutral ports, and blockaded at its mouth. In such cases the doctrine of the British prize courts is that the blockade maintained at the mouth of the river is valid against all the hostile ports on its banks which are intended by the blockading government to be subjected to the blockade, and this without regard to the inconvenience or commercial restriction which may thus be imposed upon the neutral ports on the neutral side of the river. This is the doctrine laid down very carefully and forcibly in its whole extent by Lord Stowell, in the case of the Maria Monsees, (6 Rob., 201,) directly involving the validity and effect of such blockade at the mouth of the co-terminous river Weser, one of the shores of which was neutral and the other hostile. The doctrine of this case, applied in several others, (6 Rob., 205, 101, 182,) has never been disturbed in the British prize courts.

In the Frau Islabe, (4 Rob., 64,) the court in the case of the blockade of the ports of Holland, in considering the application and effect of such blockade upon the internal ports on both sides of the co-terminous river Scheldt, appeared disposed to give decisive weight to the facts of the *designation* by the blockading government of such co-terminous river as being within the limits of the blobkade, holding that the river, though co-terminous, was subjected to valid blockade at its mouth if so expressly included within the limits of the blockade as notified. Such inclusion of the port of Brownsville within the limits of the blockade, as proclaimed and maintained, and such express designation of Brownsville as a blockaded port appear as above stated in this case.

(d) In the case of the Neutralitet, (6 Rob., 31,) Lord Stowell advanced a step further, and laid down the doctrine that a neutral vessel has no right under pretence or actual destination to an open port to place herself in a position where she may with impunity slip into a blockaded port, or send her cargo in, in breach of the blockade.

(e) These rules of law, thus established and applied in fa-

vor of the blockading power by the British prize courts in cases of *international blockade in the prosecution of foreign war*, even at the expense of great commercial inconvenience to neutrals and neutral ports, have plainly far stronger warrant of law, and more appropriate application to the case of ports closed in the form of blockade under the authority of municipal, as well as public, law, and in the prosecution of a *civil war by the legitimate and recognized government claiming to exercise and exercising, within its own rightful jurisdiction, in such procedure, both sovereign and belligerent rights.*

FOURTH POINT.

The Sir Wm. Peel, at the time of her capture, had already broken the blockade maintained at the mouth of the Rio Grande, and was captured *in delicto*, and upon this ground, if not otherwise, both vessel and cargo should be condemned.

(*a*) By the testimony of Gilgan, Gerrety, Haggart, and Webster (Rec., pp. 38, 40, 42, 52, and 60) it appears beyond dispute that the return cargo of the Sir Wm. Peel was brought out of the port of Brownsville to Matamoras, and thence immediately transported in lighters down the river and put on board the vessel; all the title to such cargo being disavowed by the agents at Matamoras, through whose hands it passed, and who claimed to have bought it and paid for it, and sent it forward, and put it on ship-board for the sole account and as the agents and under the instructions of Henry & Co., the claimants. Assuming the blockade of Brownsville to be valid, we submit that this proceeding, wholly apparent upon the proof, and hitherto not seriously disputed by the claimants, constitutes a breach of blockade manifestly within the rule recently adjudged and established by this court in several of the recent blockade cases, and especially in the leading cases of the Bermuda and the Springbok. Having in view the fulness and conclusiveness of the discussion in those celebrated cases of the law of continuity of voyage as involved in or affecting the application of the law of blockade, we deem it un-

necessary at this time to look beyond those cases for authority or rule upon that subject.

(*b*) The coast of Texas to the northeast of the mouth of the river Rio Grande is indented with harbors, and a blockade of the waters washing that coast was notified to all neutral nations, as appears by the letter of the British minister at Washington to his government, of the 4th of May, 1861, in which he states that he was informed by Mr. Secretary Seward "that it was intended to blockade the whole coast from the Chesapeake bay to the mouth of the Rio Grande," and "that the whole would be blockaded, and blockaded effectively." The intrusion of the Peel in these so blockaded waters, with further innocent destination, either real or pretended, was, upon the authority of the British cases already cited, a breach of blockade, imposing liability to condemnation. Much more is this true of the discharge and lading of cargo by a vessel within those waters; and the breach of blockade becomes too palpable to be disputed when the vessel, lying in such blockaded waters, receives return cargo, procured for her in a blockaded port, and sends her outward cargo up to a point where, as at Matamoras, it can be, with entire facility and impunity, passed over into such blockaded port.

(*c*) When to these considerations we add the further fact that according to the statutory description and organization of that collection district, and of its ports of entry and discharge, as above stated, the limits of the blockaded port of Brownsville extended to the mouth of the river, and thus touched the line of coast waters in which the Peel was found and captured, about one mile from the low-water mark, the conclusion that she was so captured while engaged in actual breach of the blockade of Brownsville seems wholly indisputable.

FIFTH POINT.

The whole of the testimony in this case brings out conspicuously the fact heretofore and in other cases made known to this court that the whole of this system of traffic between Matamoros and the British ports, either home or colonial, was

only a false and fraudulent pretence of honest and legitimate neutral trade, and that the plan and scheme of the voyages were organized with the purpose of breaking through the blockade of the Texan ports in a manner peculiarly offensive and derogatory, both to the belligerent and the sovereign rights of the United States. Adoption or persistent sanction of such proceedings by a government pretending to be neutral, in a case of *foreign war* waged by the United States, would constitute just *casus belli* against such government; and such a system of trade, resulting directly in supplying to the enemy the means of war, is additionally, and most of all, odious and intolerable, when it raises its head in the midst of the operations of a civil war, carried on by land and water within the rightful territorial jurisdiction of the legitimate government.

(*a*) The just inference is, that as matter of public law any neutral vessel engaged and arrested in the prosecution of a traffic so suspicious and demoralizing, should be held rigorously in a prize court to the plainest and most conclusive proof of her innocence. In the absence of such proof the inference must be that she is guilty, because no honest party for honest purpose would engage in a course of traffic so uniformly and notoriously dishonest, without providing himself with the amplest proofs of the exceptional lawfulness and innocence of his own voyage, in order that they might at least serve as muniments against the application to him of the condemning maxim "*noscitur a socis.*" Tried by this ordeal, the whole course of the conduct of the Sir William Peel, as disclosed from the record, shows, in our judgment, indisputably that the decree of restoration in the court below should be reversed, and that both ship and cargo should be condemned.

(*b*) The selection of a steamer of the size, strength, and armament of the Peel for the Matamoras trade, is hardly compatible with an honest neutral purpose. The touching at Jamaica, suppressed by the master, but confessed by the mate, is suspicious, and becomes material when the ship is after-

wards found, as testified by Woolsey, clandestinely discharging what Woolsey observed and stated to be cannons, but what the captain of the port stated to be machinery, neither guns nor machinery being upon the *manifest* of the cargo; and in this connection it should be observed that the master, when stating that no part of the cargo was contraband, is careful to confine his statement to the cargo laden "at the *commencement* of the voyage." The quality of the cargo specially fitted for the Texan market and wholly unfit for the Matamoras market, if there had been, as there was not, anything like a general Mexican market for merchandise at that place; the strange and unexplained failure of Milmo & Co., testifying through their partner Gilgan, under the order for further proof, to produce the instructions from Henry & Co., as to the disposition of the outward cargo and the purchase of the return cargo; the employment by Henry & Co., claimants, of Milmo & Co., to act as their agents, when they were the notorious and advertised commercial agents of the rebel authorities in Texas, known to have little, if any, other business than the obtaining of cotton from those authorities for exportation, as return cargo, through the port of Brownsville, where they had a branch house;—each one of these facts is an ear-mark of clandestine and dishonest purpose and dealing in this voyage on the part of all concerned in it. Each of these facts, taken singly, might have been easily avoided by any parties having an honest neutral purpose and plan of trade; and would certainly have been avoided and shunned, in the exercise of reasonable prudence and precaution, by any party intending to fit out, in the course of a traffic generally so suspicious and fraudulent, a commercial enterprise which should present the aspect and the character so rare and exceptional in those latitudes, of a lawful neutral commerce with a neutral port. And if *each* of these undisputed facts in the case and conduct of the Peel is fit to cast the gravest doubt upon the lawfulness of the voyage, then certainly their *combined* effects, suspicious and inculpating as they are, appearing in the course and conduct of a single vessel and a single voyage, exclude all ap-

parent possibility of a lawful and honest purpose and intent. The subsequent discharge and lading of cargo in breach of blockade were in appropriate sequence and strict conformity to these sinister indications.

We respectfully submit that decree of condemnation by this court will fitly conclude the matter.

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Supreme Court,

OF THE UNITED STATES.

The United States, Libellants and Appellants, *vs.* The Sir William Peel and cargo, Jesse Thornham, intervening, &c. Claimants and Respondents.	No. 98.
The Steamship Sir William Peel and cargo, A. & S. Henry & Co. and others, Claimants and Appellants, *vs.* The United States, Libellants and Respondents.	No 250.

Mr. Evarts' Brief *for the Respondents in the principal appeal, and for the Appellants in the cross-appeal.*

Upon the proofs as contained in the Records, and the "Statements" upon the Briefs of associate counsel, the following considerations are respectfully submitted:

First Point.—The claimants in this case are *neutrals*, subjects of Great Britain, and as such have a *persona*

standi in the Prize Court to allege, propound and prove, according to the regular procedure of the Prize jurisdiction, whatever is pertinent and significant on the question "of lawful prize of war," under the law of nations, as bearing upon the sentence of restitution or condemnation to be passed in the cause.

Whenever, therefore, upon the contestation of these competent litigants, any fact appears to the Court exhibiting the capture to be unlawful and void, that fact is to have its consequence in a sentence of restitution, as necessarily as upon any other form of presentation to, or cognizance by, the Court of the fact in question.

It is impossible for the Court to *ignore* the fact, for it is alleged and proved by a litigant, to whom it is open to allege and prove whatever is pertinent and is true, bearing upon the question of prize or no prize.

If the fact thus before the Court, under the rules of the law of nations, requires the restitution of the prize, sentence of condemation cannot pass without a violation of the law of nations.

Second Point.—It appears by the proofs, that the *Sir William Peel* with her cargo, when lying at anchor within the neutral territory of Mexico, was captured in violation of the *absolute* immunity from belligerent visitation, search or capture enjoyed by neutral property within neutral territory.

Upon this fact appearing the capture is, by the law of nations, illegal and void, carrying no rights to the captors, involving the neutral property or its neutral owners in no amenability to the prize jurisdiction on the merits, and exposing the captors to exemplary damages from the justice of the Prize Court, and to personal punishment from their belligerent government, which their misconduct has compromised with the neutral nation of the injured neutral owners, not less than with the neutral nation whose territory has been violated.

I.—*As between belligerents*, the RIGHTS of war are substantially measured by their POWER.

But as between neutrals, the mere power of the belligerents carries no right whatever.

The whole scope and measure of the rights of a belligerent towards neutrals, are determined by the conceded or adjusted rules and limits of interference fixed by the law of nations.

These rules and limits relate either to the theatre or region within which *any rights whatever* are conceded to the belligerents towards neutrals, or to the restrictions upon such rights *within the theatre or region where, to any degree*, such rights are conceded.

II.—By the law of nations within the region invaded by this belligerent capture, *the belligerent had no right whatever* as towards or against neutral nations, nor the property of their subjects.

"The rights of war can be exercised only within the territory of the belligerent powers, *upon the high seas*, or in a territory belonging to no one. Hence it follows that hostilities cannot lawfully be exercised within the territorial jurisdiction of the neutral state, which is the common friend of both parties."

Dana's Wheaton, § 426.

"The maritime territory of every State, extends to the ports, &c. The general usage of nations superadds to this extent of territorial jurisdiction a distance of a marine league, or as far as a cannon shot will reach from the shore, along all the coasts of the State. Within these limits, its rights of property and territorial jurisdiction are absolute, and exclude those of any other nation."

Ib., § 171.

"In order to enforce the rights of belligerent nations against the delinquencies of neutrals, and to ascertain the real as well as assumed character of all

vessels *on the high seas*, the law of nations arm them with the practical power of visitation and search."

1 Kent., 153, [marg.]

"The right of visiting and searching merchant ships *upon the high seas*, whatever be the ships, whatever be the cargoes, whatever be the destination, is an incontestible right of the lawfully commissioned cruisers of a belligerent nation."

The Maria, 1 Rob., 360.

III.—Every exercise of belligerent right, whether of visitation, search or capture within neutral territory is absolutely unlawful, and every capture within such territory is absolutely void.

"There is no exception to the rule, that every voluntary entrance into neutral territory, with hostile purposes, is absolutely unlawful."

Dana's Wheaton, § 429.

"All captures made by the belligerent within the limits of this (neutral) jurisdiction are absolutely illegal and void."

Ib., § 428.

"When the fact is established, *it overrules every other consideration. The capture is done away; the property must be restored, notwithstanding it may actually belong to the enemy;* and if the captor should appear to have erred wilfully, and not merely through ignorance, he would be subject to further punishment."

The Vrow *Anna Catharina*, 5 Rob., 18.

Cited and approved, Dana's Wheaton, § 429.

The Government of the United States, in the most definite and vigorous manner, and in the most public and authentic form, recognized these limitations of belligerent rights and enjoined upon our cruisers a strict observance of them, under penalty of its displeasure.

Upon a suggestion from the British Minister, that the cruiser *Adirondack* had pushed the chase of a British vessel within the line of neutral maritime jurisdiction, the Secretary of State, under date of August 14, 1862, communicated to the Secretary of the Navy the views of the Government in the following terms:

"The President desires that you ascertain the truth of this fact with as little delay as possible, since, if it be true, the commander of the *Adirondack has committed an inexcusable violation of the law of nations, for which acknowledgment and reparation ought to be promptly made.* To guard against any such occurence hereafter, the President desires that you at once give notice to all commanders of American vessels of war, *that this Government adheres to, recognizes and insists upon the principle that the maritime jurisdiction of every nation covers a full marine league from the coasts, and that acts of hostility or of authority within a marine league of any foreign county, by any naval officer of the United States, are strictly forbidden, and will bring upon such officer the displeasure of his Government.*"

Lawrence's Wheaton, n. 215, p. 715.

Indeed the *commission* to cruisers, by the law of nations and by the practice of our Government, accepts and enforces these limitations on belligerent rights towards neutrals.

Thus the "instructions to private armed vessels," during the last war with Great Britain, enforced this limitation.

"The *tenor of your commission*, under the Act of Congress, entitled 'An Act concerning letters of marque, prizes and prize goods,' a copy of which is hereunto annexed, will be kept constantly in your view. The *high seas*, referred to in your commission, you will understand generally to refer to low water mark; *but with the exception of the space within one league, or three miles, from the shore of countries at*

peace both with Great Britain and with the United States. You may, nevertheless, *execute your commission* within that distance of the shore of a nation at war with Great Britain, and even upon the waters within the jurisdiction of such nation, if permitted so to do."

Wheat. Captures, Appendix, 341.

Accordingly, the Secretary of the Navy, in a communication to the Secretary of State, in answer to the remonstrance of the British Minister against the violation of the law of nations by this and other captures in neutral waters, as made known to the Secretary of the Navy by the Secretary of State, expressly disclaims either the right or the purpose to make such captures.

"I do not understand our Government to claim the right of, &c., *nor the right of capturing ships in Mexican waters*, or in any neutral waters."

"It is not improbable that the commanders of some of our cruisers in the Gulf are not accurately informed of the extent of the National rights herein referred to, and the Department will lose no time in placing the matter properly before them."

Mr. Welles to Mr. Seward, March 5, 1864,
Dip. Corr., p. 548.

Third Point.—As, then, the capture of the *Sir William Peel* and her cargo was made in the neutral waters of Mexico, and upon that mere statement was,

(1.) In excess of the cruiser's commission from our Government;

(2.) In excess of exercise of beligerent rights, conceded and submitted to by the neutral nation whose subjects are the owners of the captured property;

(3.) As such capture had in terms been "strictly forbidden" to our cruisers, and brings upon the captors "the displeasure of the Government."

(4.) As it has been pronounced by the Government "an inexcusable violation of the law of nations, for which acknowledgment and reparation ought to be promptly made;"

(5.) As the fact has been made to appear to the prize Court upon the competent contestation of the neutral claimants;

The vessel and cargo are NOT LAWFUL PRIZE OF WAR, and the decree of restitution must be affirmed.

The Prize Court is but a judicial scrutiny or inquisition, in behalf of the Government, to ascertain and adjudicate whether the *res* is subject to condemnation, as captured within and in pursuance of the belligerent right of the Government, conformably to the law of nations.

When the contrary appears, restitution follows, and in no case can the Treasury be enriched, and the captors rewarded, by condemnation, when the capture is "an inexcusable violation of the law of nations, for which reparation must be promptly made," and brings upon the captor "the displeasure of his Government," *provided this character of the capture is before the Prize Court.*

Fourth Point.—It is confidently submitted that no case can be found in which the property of *neutral claimants*, admitted to allege and prove the invalidity of a capture in neutral waters, has been condemned.

The case of the Lilla (2 Sprague's Decisions), in the District Court of Massachusetts, is no exception to this proposition.

The Court held the *fact* not made out, and the very brief observation of the Court, that, if made out, the objection was not open to the neutral claimant, was but *obiter*.

Fifth Point.—The rule, supposed to be established, and the cases in support of it, that, though actual enemy property captured in neutral waters is not good prize, and must be restored, upon that fact appearing, yet the enemy owner cannot be heard to make the objection, but only the neutral nation whose waters have been entered, rest upon the reason that *no* wrong can be done to an *enemy*, and *no* allegation can be heard in *his* behalf.

In other words, that in the case of enemy's property, the fact of invalid capture cannot come before the Prize Court, except upon the representation of the neutral nation.

"It is a *technical rule* of the Prize Courts to restore to the individual claimant, in such a case, only on the application of the neutral government whose territory has been thus violated. This rule is founded upon the principle that the neutral state alone has been injured by the capture, and that the *hostile claimant has no right to appear for the purpose of suggesting the invalidity of the capture.*"

Dana's Wheaton, § 430.

[Mr. Dana's note upon this section of Wheaton joins issue with the learned author, but his theory seems not adequately supported either by its reason, or by authority.]

Ib. note 203, p. 527.

The *Anne*, 3 Wheat., 435, the only case in this Court upon the question, was of an *enemy ship*, and so far from disturbing, confirms, the position contended for in behalf of neutral claimants.

> "A capture made within neutral waters is, *as between enemies*, deemed to all intents and purposes rightful.
>
> "*The enemy has no rights whatsoever;* and if the neutral sovereign omits or declines *to interpose a claim*, the property is condemnable, *jure belli*, to the captors."
>
> Story, J., p. 447.

This case is subject to the further criticism, as an authority on this point, that the facts show, and the Court so hold, that the protection of neutrality had been forfeited by the captured ship having commenced hostilities against the captor, so that no claim by the neutral sovereign could have been interposed.

Ib., pp. 447–8.

The *Richmond*, 9 Cranch, 102, was the case of a municipal forfeiture of a vessel of the United States, the seizure having been made in St. Mary's river, within the Spanish territory of Florida.

On such a case it is obvious that the violation of Spanish territory could never come in issue, judicially, nor could it in anywise protect the vessel against the municipal justice of its own government.

Upon an examination of the decisions of Sir Wm. Scott, it will be found that the cases in which condemnation has passed, for want of the intervention of the neutral government, have been upon actual enemy's property where no claimant could appear.

Sixth Point.—If, however, this neutral property represented by neutral claimants, shall be held amenable to the prize jurisdiction upon the merits, it is apparent that neither the vessel nor the cargo captured is good prize of war.

I.—As to the VESSEL.

(a.) Its sincere and permanent neutral ownership is unquestionable, either upon the preparatory, or the further, proofs.

(b.) It had violated or attempted to violate no blockade.

Matamoras could not be, and Brownsville was not, blockaded.

The proofs show there was no blockade in fact and none asserted by our naval vessels, in whose presence the Sir William Peel had been discharging and receiving cargo for three months.

The Navy Department expressly excluded Brownsville from the blockade of Texas.

"The whole coast of Texas, EXCEPT SUCH PART AS MAY BE NECESSARY FOR ACCESS TO THE PORT OF BROWNSVILLE, is to be regard as under blockade."

Mr. Welles to Mr. Seward, Dip. Corr., 1864, Part II., 548.

(c.) If its inward cargo included any contraband, it had all been landed before the capture, and so the ship was free from interference on that ground.

(d.) But if contraband had been found on board, the *ship* would not have been involved in condemnation therefrom. There was no connection between the ship or its owners and the cargo or its owners, except that of carriers under the charter party.

(e.) But, further, upon the proofs it is impossible to contend that contraband formed any party of the inward cargo.

(f.) Again, if any part of the inward cargo was contraband in its nature, as the voyage was between neutral ports in its project, and was consummated by the delivery of the whole cargo at Matamoras, no offence is predicable of a trade in contraband not seeking an enemy port.

II.—As to the CARGO.

(a.) The inward cargo captured was neutral property, and was not contraband.

Its value was so trivial as to deserve little atten-

tion, and it consisted of "wagon axles" and "trace chains."

See appraisement, Rec., p. 211.

(b.) The outward cargo consisted of 904 bales of cotton, and as it was not contraband in its nature, and, whatever its nature, it could not be contraband from tis outward destination; as, besides, it was not being exported in violation of blockade, it can be condemned only *as enemy property*.

(c. Upon the proofs it is impossible to contend that any imputation goes beyond the fact, that some undesignated and unmeasured part of this cotton *had been*, before lading, enemy property.

But as trade by neutrals with the enemy, and the the purchase of enemy property, except in violation of blockade are wholly lawful, no consequence of condemnation, *from enemy origin*, can be pretended.

The Bermuda, 3 Wall., 557.

Seventh Point.—The capture was wholly unjustifiable, and the restitution decreed should have been attended with damages and costs.

I. The innocence of the vessel and her voyage and cargo, was apparent upon visitation, and there was no justification for suspicion or surmise to their prejudice.

II. When captors thus intercept an open prosecution of an apparently lawful trade, and visitation exhibits every trait of honest neutrality, and the commerce thus indicated is not only lawful, but is constantly engaged in by our own vessels, the integrity of the Prize Courts demands the infliction of damages and costs as a check to the speculative cupidity of captors.

III. The features of this case are not distinguishable

from those of the *Labuan*, intercepted in her trade at Matamoras, and brought into New York. She was promptly restored, the diplomatic claim for damages immediately recognized, and an adjustment proceeded with.

Dip. Con. 1863, Part I., p. 476, Lord Lyons to Mr. Seward.

Eighth Point.—As regards the regularity of the cross-appeal of the claimants from the decree of July 3, 1864, charging the claimants with "the costs and charges consequent upon the capture" and refusing them "damages," it is apparent that no *final disposition* of the cause in the Court below had been made until this decree was entered.

The appeal of the United States from the unperfected sentence of the Court below was, strictly, premature. But this final decree may be treated as, *nunc pro tunc*, appended to the earlier decree from which the United States appealed and, thus, that appeal sustained, and the appeal of the claimants stand as a cross-appeal from the portion of the decree prejudicial to them.

Last Point.—Upon these considerations, and upon the presentations of the *law* and of the facts, as made in the briefs for the associate counsel for the claimants, it is confidently submitted that the decree of restitution should be affirmed, and the decree charging the claimants with costs and refusing them damages should be reversed.

Wm. M. Evarts,
Advocate for Claimants.